

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL JAMES HARNED,

No. 3:21-cv-00878-AR

Plaintiff,

ORDER

v.

UNITED STATES OF AMERICA; and  
MERCK & CO.,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Armistead issued a Findings and Recommendation on May 17, 2022, in which he recommends that the Court grant the United States' Motion to Dismiss for Lack of Jurisdiction and Merck & Co.'s Motion to Dismiss for Failure to State a Claim, and that the claims be dismissed without prejudice. F&R, ECF 28. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed, the Court is relieved of its obligation to review the record *de novo*. *United States v.*


*Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988) (*de novo* review required only for portions of Magistrate Judge's report to which objections have been made). The Court finds no error with Judge Armistead's recommendation that the Court grant Defendants' motions to dismiss and that the claim against the United States be dismissed without prejudice. Plaintiff, however, should be given leave to amend his products liability claim against Merck & Co.

### CONCLUSION

The Court ADOPTS in part Magistrate Judge Armistead's Findings & Recommendation [28]. The Court GRANTS the United States' Motion to Dismiss for Lack of Jurisdiction [3] and Merck & Co.'s Motion to Dismiss for Failure to State a Claim [8]. Plaintiff's claim against the United States is dismissed without prejudice. Plaintiff's claim against Merck & Co. is dismissed with leave to amend. Plaintiff may file an amended complaint within 14 days of this Order. Failure to file an amended complaint will result in dismissal of this action without prejudice.

IT IS SO ORDERED.

DATED: August 8, 2022.

  
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MARCO A. HERNÁNDEZ  
United States District Judge